



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 28, 1998

Mr. Frank Crull
Assistant General Counsel
Department of Public Safety
5805 N. Lamar Blvd.
Austin, Texas 78773-0001

OR98-2541

Dear Mr. Crull:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118923.

The Texas Department of Public Safety (the "department") received two separate requests for a variety of information concerning a specified accident. In response to the request, you submitted to this office for review the information which you assert is responsive. You seek to withhold from public disclosure, the "entire file" pursuant to sections 552.103 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the documents at issue.

Initially, we note that the act's exceptions do not, as a general rule, apply to information made public by other statutes. Open Records Decision No. 525 (1989). We note that included among the submitted information you seek to withhold is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). The Seventy-fifth Legislature repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code

¹According to your correspondence, the department is releasing to one requestor a statement made by the requestor's client to the department. However, we note that a release to one requestor results in a selective disclosure, thus requiring the department to release the information at issue to all other requestors. Gov't Code §§ 552.007(a), 552.223; Open Record Decision Nos. 490 (1988) (governmental body may not practice selective disclosure). Therefore, since we are not aware and you have not notified us otherwise, unless the requested statement is confidential by law and the requestor to whom you released the statement had a special right of access to it, you must release the statement to the other requestor for this same information.

concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Gen. Laws 4575, 4582-4583 (to be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (1962). The supreme court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.²

Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency "is required to release" a copy of an accident report to a person who provides the law

²Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Gen. Laws 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. See also Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Gen. Laws 4413, 4414.

enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestors provided the department with the location, the date of the accident, and the name of a person involved in the accident. Thus, under section 47(b)(1)(D) of article 6701d, V.T.C.S, you are required to release the accident reports *in their entirety* to the requestors.

As for the remaining records, we next address the other claimed exceptions. Section 552.108 of the Government Code, "the law enforcement exception," provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

....

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime

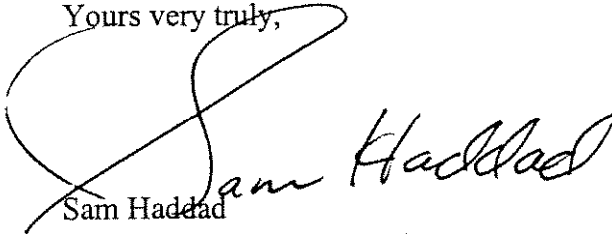
Gov't Code § 552.108. You state that "[b]ecause the investigation is ongoing, Corporal Gatlin has advised that criminal charges may be pursued." Furthermore, you advise our office that the "Titus County District Attorney's Office is considering pursuing possible criminal litigation at this time." As the requested information relates to a pending criminal investigation or prosecution, we find that release of the requested information would interfere with the detection, investigation, or prosecution of crime. Accordingly, we conclude that the department may withhold most of the requested information from the requestors based on section 552.108(a)(1).

However, we note that certain basic information normally found on the front page of an offense report, including a detailed description of the offense, is generally considered public. See Gov't Code § 552.108(c). Basic information is the type of information that is considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Therefore, except for basic information normally found on the front page of an offense report, you may withhold the remaining information from disclosure pursuant to section

552.108.³ You may choose, however, to release all or part of the information at issue that is not otherwise confidential by law. Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/nc

Ref.: ID# 118923

Enclosures: Submitted documents

cc: Mr. Jeffrey Elliott
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³Because the requested information may be withheld under section 552.108, we need not address your section 552.103 argument. We note that basic information in an offense report generally may not be withheld under section 552.103. Open Records Decision No. 597 (1991).